

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
 SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	Massachusetts
Name (under which you were convicted): Tarek Mehanna		Docket or Case No.: 09-cr-10017	
Place of Confinement: United States Penitentiary, Marion, Illinois		Prisoner No.: 05315-748	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Tarek Mehanna	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court for the District of Massachusetts

(b) Criminal docket or case number (if you know): 09-cr-10017

2. (a) Date of the judgment of conviction (if you know): 12/20/2011

(b) Date of sentencing: 4/13/2012

3. Length of sentence: 210 months

4. Nature of crime (all counts):

Count I: Conspiracy to Provide Material Support to a Designated Foreign Terrorist Group, 18 U.S.C. § 2339B; Counts II & III: Conspiracy and Attempt to Provide Material Support to Terrorists, 18 U.S.C. § 2339A (predicated upon 18 U.S.C. §§ 956, 2332); Count IV: Conspiracy to Kill in a Foreign Country, 18 U.S.C. § 956; Count V: Conspiracy to Make False Statements, 18 U.S.C. § 371; Counts VI & VII: Making False Statements, 18 U.S.C. § 1001(a)(2).

5. (a) What was your plea? (Check one)

(1) Not guilty ☒

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the First Circuit(b) Docket or case number (if you know): 12-1461(c) Result: Conviction Affirmed(d) Date of result (if you know): 11/1/2015(e) Citation to the case (if you know): United States v. Mehanna, 735 F.3d 32 (1st Cir. 2013).

(f) Grounds raised:

The conviction rested on protected speech; inflammatory evidence and spillover prejudiced the entire trial; Mehanna's expert witnesses were improperly excluded; some of the government's theories were legally impossible; the government could not prove the materiality of certain false statements; and Mehanna was entitled to a new sentencing.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes



No



If "Yes," answer the following:

(1) Docket or case number (if you know): 13-1125(2) Result: Certiorari Denied(3) Date of result (if you know): 10/6/2014(4) Citation to the case (if you know): United States v. Mehanna, 135 S.Ct. 49 (2014).

(5) Grounds raised:

The lower courts misapplied the holding of Holder v. Humanitarian Law Project to Counts I-III in violation of Mehanna's First and Fifth Amendment rights.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: N/A(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know):

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

-
12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: The government suppressed evidence material to guilt or innocence in the form of impeaching evidence, in violation of the Due Process Clause of the Fifth Amendment.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attached Memorandum of Law.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

The government's failure to disclose did not come to light until it began to disclose the evidence in other cases in 2014.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

See attached Memorandum of Law.

GROUND TWO: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

N/A

GROUND THREE: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

-
13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Mehanna has never presented the ground in this motion before any federal court because the existence of the classified information that serves as the basis for this challenge was never disclosed to Mehanna's attorneys during his trial or appeals and indeed appears not to have been known to any government or defense attorney prior to 2014. See attached Memorandum of Law; Declaration of Joshua Dratel.

-
14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing:
See attached Appendix.
-
- (b) At the arraignment and plea:
See attached Appendix.
-
- (c) At the trial:
See attached Appendix.
-
- (d) At sentencing:
See attached Appendix.
-
- (e) On appeal:
See attached Appendix.
-
- (f) In any post-conviction proceeding:
See attached Appendix.
-
- (g) On appeal from any ruling against you in a post-conviction proceeding:
See attached Appendix.
-
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:
N/A
-
- (b) Give the date the other sentence was imposed: _____
- (c) Give the length of the other sentence: N/A
-
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*
N/A
-

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

conferences under 28 U.S.C. § 2255(b) and 18 U.S.C. App. 3 § 2; disclosure of withheld classified information; such further discovery as may then be warranted; leave to submit classified amendment; vacate/set aside judgment; and new trial,

or any other relief to which movant may be entitled.

/s/ Julie Silva Palmer, September 25, 2015

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____.

(month, date, year)

Executed (signed) on 9/25/2015 (date)

/s/ Julie Silva Palmer, Attorney for Movant

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Appendix

The following is a list of attorneys who represented Tarek Mehanna at various stages in the proceedings in response to Question 15(a)-(g).

Trial

(Including Preliminary Hearings, Arraignment/Plea, Trial, and Sentencing)

J. W. Carney, Jr., BBO #074760
J. W. Carney, Jr. & Associates
20 Park Plaza
Suite 1405
Boston, MA 02116

Janice Bassil, BBO #033100
John Oh, BBO #675916
Bassil, Klovee & Budreau
20 Park Plaza, Suite 1005
Boston, MA 02116

Sejal H. Patel, BBO #662259
Law Office of Sejal H. Patel
3311 Mission Street #187
San Francisco, California 94110

Steven R. Morrison, BBO #669533
1526 Robertson Court
Grand Fork, ND 58203

Joshua L. Dratel, admitted *pro hac vice*
Law Offices of Joshua L. Dratel, P.C.
29 Broadway, Suite 1412
New York, NY 10006

Appeal

(Including First Circuit, petition for rehearing en banc, and petition for certiorari)

P. Sabin Willett, BBO #542519
Julie V. Silva Palmer, BBO #676788
Amanda McGee, BBO #678883
Rhonda Yacawych, BBO #560183
Liza G. Hays, BBO #688131
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110

Susan L. Baker Manning, First Cir. #1152545
Morgan, Lewis & Bockius LLP
2020 K Street NW
Washington, DC 20004-2541

Caleb Schillinger, BBO #676592
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston, MA 02210-2028

Jared Craft, BBO #679593
52 Cedar Street, Unit 1
Somerville, MA 02143

J. W. Carney, Jr. , BBO #074760
J. W. Carney, Jr. & Associates
20 Park Plaza
Suite 1405
Boston, MA 02116

Steven R. Morrison, BBO #669533
1526 Robertson Court
Grand Fork, ND 58203

Post-Conviction Proceedings

P. Sabin Willett, BBO #542519
Julie V. Silva Palmer, BBO #676788
Amanda McGee, BBO #678883
Rhonda Yacawych, BBO #560183
Arcangelo S. Cella, BBO #690438
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110

Appeal from Adverse Ruling in Post-Conviction Proceeding

None.

CERTIFICATE OF SERVICE

I, Julie V. Silva Palmer, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 25, 2015.

/s/ Julie Silva Palmer

Julie V. Silva Palmer